

1725 I STREET, N.W.  
SUITE 300  
WASHINGTON, DC 20006  
Phone: 703-323-9330  
Fax: 703-323-6617

**HERSHKOVITZ &  
ASSOCIATES**

# Fax

<b>To:</b> Examiner Alexa Doroshenk	<b>From:</b> Abraham HersHKovitz
<b>Fax:</b> 571-273-1446	<b>Date:</b> August 20, 2004
<b>Phone:</b> 571-272-1446	<b>Pages:</b> 5
<b>Re:</b> S/N: 09/992,590;	<b>CC:</b> [Click here and type name]
Our Ref: J06011.P06011	

☒ **Urgent**    ☒ **For Review**    ☐ **Please Comment**    ☐ **Please Reply**    ☐ **Please Recycle**

\*\*\*\*\***CONFIDENTIALITY NOTE**\*\*\*\*\*

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Dear Examiner Doroshenk:

As we discussed, please find attached a copy of the Petition we filed on August 2, 2004 and the PTO receipt evidencing its filing.

Very truly yours,

*Abbe HersHKovitz*

Abe HersHKovitz

Reg. No. 45,294

**HERSHKOVITZ & ASSOCIATES**

PATENT, TRADEMARK &amp; COPYRIGHT CAUSES

1725 I STREET, N.W., SUITE 300

WASHINGTON, D.C. 20006

TEL: (703) 323-9330

FAX: (703) 323-6617

E-mail: hershkovitz\_patents@verizon.net

Date: **August 2, 2004**File In: **OIPE**In the matter of : **CONTINUOUS SLURRY POLYMERIZATION VOLATILE REMOVAL**Applicant: **James A. Kendrick et al**Application No.: **09/992,590**Filed: **November 6, 2001**Docket No.: **P06011**

Issued: \_\_\_\_\_

Patent No.: \_\_\_\_\_

The Patent and Trademark Office (PTO) date stamp hereon is an acknowledgement that, on the date indicated, the PTO received the following:

- |   |  |
|---|--|
| <input type="checkbox"/> Amendment _____                              | <input type="checkbox"/> Claim of Priority                                 |
| <input type="checkbox"/> Executed Assignment and Cover Letter         | <input type="checkbox"/> Certified Copy of _____                           |
| <input type="checkbox"/> SES Assertion                                | <input type="checkbox"/> Declaration <input type="checkbox"/> Supplemental |
| <input type="checkbox"/> Request for Extension of Time                | <input type="checkbox"/> Executed <input type="checkbox"/> Unexecuted      |
| <input type="checkbox"/> Fee Filing                                   | <input type="checkbox"/> Transmittal Letter                                |
| <input type="checkbox"/> Recording                                    | <input type="checkbox"/> Patent Application                                |
| <input type="checkbox"/> Issue  | <input type="checkbox"/> Provisional <input type="checkbox"/> Reexam       |
| <input type="checkbox"/> Extension                                    | <input type="checkbox"/> Reissue <input type="checkbox"/> Design           |
| <input type="checkbox"/> _____  | <input type="checkbox"/> Continuation <input type="checkbox"/> CIP         |
| <input type="checkbox"/> Fee Transmittal Form                         | _____ pages  |
| <input type="checkbox"/> Maintenance Fee Payment                      | _____ claim _____ independent  |
| <input type="checkbox"/> PTOL-85B Issue Fee                           | _____ sheets of drawings   |
| <input type="checkbox"/> Letter to Draftsman                          | _____ figures  |
| <input type="checkbox"/> Design Application Transmittal Form          | <input type="checkbox"/> IDS form PTO-1449                                 |
| <input type="checkbox"/> Utility Application Transmittal Form         | <input type="checkbox"/> References <input type="checkbox"/> as attached   |
| <input type="checkbox"/> Provisional Application Cover Sheet          | <input type="checkbox"/> as listed on reverse                              |
| <input type="checkbox"/> CPA Request Transmittal Form                 | <input type="checkbox"/> Certification under 1.97(e)                       |
| <input type="checkbox"/> RCE Transmittal Form including Submission    | <input type="checkbox"/> Self-addressed post card                          |
| <input type="checkbox"/> Cover Letter                                 | <input type="checkbox"/> Certificate of Mailing (C-O-M)                    |
| <input type="checkbox"/> Check No. _____ for _____                    | <input type="checkbox"/> Power of Attorney by Assignee                     |
| <input type="checkbox"/> Rule 53b and 53f Letter for Unexecuted Appl. | <input checked="" type="checkbox"/> <b>Petition under 37 CFR 1.181</b>     |
| <input type="checkbox"/> _____  | <input type="checkbox"/> _____   |

P06011.A10

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : James A. Kendrick et al

Appln. No. : 09/992,590

Commissioner for Patents

Attn: Stephen G. Kunin  
DEPUTY COMMISSIONER FOR  
PATENT EXAMINATION POLICY

Filed : November 6, 2001

For : CONTINUOUS SLURRY POLYMERIZATION VOLATILE REMOVAL

**PETITION UNDER 37 C.F.R. 1.181  
REQUESTING SUPERVISORY REVIEW BY COMMISSIONER**Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir :

This is a Petition for Supervisory Review of the handling of the Petition to Expunge under 37 CFR 1.59(b). Applicant's representative has attempted to resolve this matter at different organizational levels within the PTO, all to no avail. Thus, intervention by the Deputy Commissioner for Patent Examination Policy is respectfully requested.

Applicant filed on May 12, 2003, a Petition under 37 CFR 1.59(b) to Expunge certain proprietary material filed on July 12, 2002, which Petition was granted on September 29, 2003 along with an indication that the proprietary material was expunged and destroyed.

Additionally, Applicant filed a copy (under seal in accordance with MPEP 724.02) of

-1-

P06011.A10

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the same proprietary material on July 16, 2003, along with a Petition requesting that the proprietary material be expunged if found by the Examiner to not be important to the examination of the claims. The above-identified application is awaiting examination.

Applicant's representative ordered (as a member of the general public, not as Applicant's representative) a copy of the PTO file history for the above-identified application and was dismayed to receive recently a CD mailed by the PTO which included an unsealed copy of the proprietary material (attached to the IDS of July 12, 2002), in spite of the indication in the decision of September 29, 2003 that the proprietary material was destroyed. This is a clear violation of PTO's own policy as announced in the OG Notice of May 18, 2004. The relevant portion of the OG Notice is reproduced below:

In general, patent applications, and papers related to the application, are scanned and maintained in an IFW. Application documents that are not scanned include documents that the United States Patent and Trademark Office (Office) is unable to scan (e.g., certain photographs and documents submitted in electronic form, such as the Computer Readable form for a Sequence Listing) and documents that are clearly marked and submitted in compliance with MPEP 724.02. Application documents that are not scanned are maintained in an artifact folder, and are not available as part of the IFW in the Patent Application Information Retrieval (PAIR) system. If the application file and contents are available to the public pursuant to 37 CFR Secs. 1.11 or 1.14, any materials submitted pursuant to MPEP 724.02 will be in an artifact folder and will be released to the public with any other application papers if a petition to expunge (37 CFR Sec. 1.59) was either filed and denied, or not filed, by the time the application was allowed or a notice of abandonment is mailed. With the mailing of the notice of allowance or notice of abandonment, the examiner will review the patent application file and determine if a petition to expunge is in the file but not acted upon. If a petition to expunge was dismissed as being premature since the application was not yet allowed, the petition will be acted upon again, even if applicant had previously been required to resubmit the petition after allowance. If the application is being allowed, and the information is found to not be important to a

P06011.A10

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reasonable examiner in deciding on patentability (see MPEP 724.04(A)-(C)), the petition to expunge will be granted and the information will be expunged.

The PTO violated its own policy by:

- (1) scanning into IFW proprietary material which was clearly marked and submitted in compliance with MPEP 724.02, rather than maintaining the material in an artifact folder;
- (2) failing to expunge and destroy the proprietary material in a manner indicated in the decision of September 29, 2003; and
- (3) releasing a copy of the proprietary material to applicant's representative who acted as a member of the public (and thus should not have received this material).

Accordingly, Petitioner requests that the PTO take remedial steps by:

- (1) expunging the proprietary material from the application file, including deletion of the improperly scanned in proprietary material from the PTO official IFW file<sup>1</sup>; and
- (2) taking steps to ensure that the Examiner will act on the Petition to Expunge filed on July 16, 2003, at the time of allowance of the application.

While this Petition is not believed to require a fee, the Commissioner is authorized to charge any necessary fees to deposit account 50-2929.

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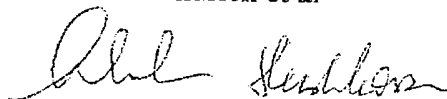
<sup>1</sup> Petitioner was informed during telephone conversations with PTO officials that scanned in material is not normally deleted. However, it is Petitioner's position that the PTO should make exceptions to its normal policy in situations where applicants' rights (i.e., the right to keep material submitted in accordance with MPEP 724.02 sealed) under PTO policy are in danger of being violated as a result of PTO error in following its own policy (i.e., the no scanning policy quoted above).

P06011.A10

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Please address any inquiries relative to this Petition to the undersigned.

James A. Kendrick et al



Abraham HersHKovitz

Reg. No. 45,294

August 2, 2004  
HERSHKOVITZ & ASSOCIATES  
PATENT AGENCY  
1725 I STREET, NW  
SUITE 300  
WASHINGTON, DC 20006

TEL: (703) 323-9330

FAX: (703) 323-6617

HersHKovitz\_Patents@Verizon.net (e-mail)